

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
UNITED STATES OF AMERICA, : Docket #1:19-mj-08641-  
Plaintiff, : UA All Defendants  
- against - :  
Liu, Zhongsan : New York, New York  
Defendant. : September 16, 2019  
----- : PRESENTMENT HEARING

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE ONA T. WANG,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: U.S. Attorney's Office, SDNY  
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Interpreter Present

Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 HONORABLE ONA WANG (THE COURT): Good  
3 afternoon -- or good evening, almost.

4 MR. MARTIN COHEN: Good afternoon, your Honor.  
5 Martin Cohen from the Federal Defenders on behalf of  
6 Mr. Liu.

7 THE COURT: Okay. Good evening.

8 Good evening, Mr. Liu. Mr. Liu, are you able to  
9 speak and understand English?

10 [Colloquy through interpreter]

11 MR. ZHONGSAN LIU (THE DEFENDANT): No.

12 THE COURT: Okay. Please be seated. You can  
13 stay seated.

14 All right, are you able to hear and understand  
15 what the interpreter is telling you?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay, can I have the date and time of  
18 arrest, please?

19 MS. GILLIAN GROSSMAN: Yes, your Honor. The  
20 defendant was arrested at 6:21 AM this morning in Fort Lee,  
21 New Jersey.

22 THE COURT: All right. I am Judge Wang. You are  
23 here because you are charged with certain crimes by a  
24 complaint supported by an affidavit. Do you have a copy of  
25 the complaints?

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2 THE DEFENDANT: No.

3 THE COURT: Okay. The purpose of today's  
4 proceeding is to advise you of certain rights that you  
5 have, inform you of the charges against you, consider  
6 whether counsel should be appointed for you, and decide  
7 under what conditions, if any, you shall be released  
8 pending trial.9 I'm now going to explain certain constitutional  
10 rights that you have. You have the right to remain silent.  
11 You are not required to make any statements. Even if you  
12 have already made statements to the authorities, you do not  
13 need to make any further statements. Any statements that  
14 you do make can be used against you. You have the right to  
15 be released, either conditionally or unconditionally,  
16 pending trial unless I find that there are no conditions  
17 that would reasonably assure your presence at future court  
18 appearances and the safety of the community.19 If you are not a United States citizen, you have  
20 the right to request that a government attorney or a law  
21 enforcement official notify a consular officer from your  
22 country of origin that you've been arrested. In some  
23 cases, a treaty or other agreement may require the United  
24 States government to give that notice whether you request  
25 it or not.

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2 You have the right to be represented by an  
3 attorney during all court proceedings including this one  
4 and during all questioning by the authorities.

5 You have the right to hire your own attorney. If  
6 you cannot afford an attorney, I will appoint one today to  
7 represent you.

8 Do you understand your rights as I've just  
9 explained them?

10 THE DEFENDANT: Yes.

11 THE COURT: I understand that you wish for me to  
12 appoint counsel. And I have before me an Affidavit of  
13 Financial Condition that you have signed under penalty of  
14 perjury. Did you complete that form with the assistance of  
15 Mr. Cohen today?

16 THE DEFENDANT: Yes.

17 THE COURT: Please be aware that you can be  
18 charged with perjury for any false statements in this  
19 affidavit. Also, you must tell the Court if there is any  
20 change to your financial status.

21 Please raise your right hand.

22 Do you swear or affirm that the statements made on  
23 your financial affidavit are true and correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay, based on the statements you

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2 have made on your financial affidavit, I am approving the  
3 appointment of counsel. Mr. Cohen will serve as your  
4 appointed counsel.

5 All right, I have before me a complaint containing  
6 the charges against you in this case. It is one count of  
7 conspiracy to commit visa fraud.

8 Mr. Cohen, have you received a copy of the  
9 complaint?

10 MR. COHEN: I have, your Honor. I've reviewed the  
11 complaint with Mr. Liu with the aid of a Mandarin  
12 interpreter, and we waive its public reading.

13 THE COURT: Okay, Mr. Liu, do you understand the  
14 charges against you?

15 THE DEFENDANT: Yes.

16 THE COURT: All right, Mr. Liu, you have the  
17 right to a preliminary hearing at which the government will  
18 have the burden of showing that there is probable cause to  
19 believe that the crime for which you are being charged have  
20 been committed and that you were the person who committed  
21 it. At the hearing you or your counsel would be entitled  
22 to cross-examine any witnesses and introduce evidence.  
23 However, a preliminary hearing will not be held if you are  
24 indicted by a grand jury before the date of a preliminary  
25 hearing. I will set the preliminary hearing date at the

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2 conclusion of these proceedings.

3 I'll hear next from the government as to bail,  
4 detention or release. Is there an agreement regarding  
5 release pending trial?

6 MS. GROSSMAN: Your Honor, the parties have agreed  
7 on several proposed conditions for the Court's  
8 consideration with the exception of electronic monitoring,  
9 as to which there is no agreement. May I start with the  
10 agreed-upon proposed conditions?

11 THE COURT: Please.

12 MS. GROSSMAN: First, a \$500,000 personal  
13 recognizance bond cosigned by two financially responsible  
14 persons; second, pretrial supervision as directed; the  
15 surrender of all travel documents with no new applications;  
16 and travel restricted to the Southern and Eastern Districts  
17 of New York, along with the District of New Jersey. And  
18 the government is also requesting electronic monitoring.

19 THE COURT: Okay, and Mr. Cohen or Ms. Grossman,  
20 would you like to tell me where the dispute is regarding  
21 electronic monitoring?

22 MR. COHEN: Sure, your Honor. Just to finish up  
23 with the agreed-upon package would be that Mr. Liu would be  
24 released today on his own signature. The government is  
25 already in possession of his passport. And he would have

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2 one week to satisfy the cosigner provisions.

3 Your Honor, the dispute is essentially that in our  
4 view electronic monitoring is more restrictive than  
5 required. Under the Bail Reform Act, the Court needs to  
6 impose the least restrictive conditions. Mr. Liu is a 57-  
7 year-old man who's never been arrested before. He's worked  
8 in the same place for the last 26 years; the last two years  
9 he's been in the United States. He has absolutely zero  
10 interest in going and doing anything other than to contest  
11 these charges. The penalties associated with violating the  
12 bail-jumping provisions are far worse than the penalties if  
13 he was convicted of the underlying offense. The main  
14 purpose for electronic monitoring is to address danger to  
15 the community. If -- there are many other ways that  
16 Pretrial is able to keep track of individuals that are less  
17 restrictive than electronic monitoring. For someone of  
18 Mr. Liu's background and circumstances, the Court should  
19 really have no concern that the agreed-upon conditions,  
20 which is a half-a-million-dollar personal recognizance bond  
21 cosigned by two financially responsible people would not be  
22 sufficient to reasonably assure his appearance in court as  
23 required. Electronic monitoring with a curfew does not  
24 significantly add to that in any meaningful way. And so  
25 we'd urge the Court not to impose it because it's not

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2 necessary.

3 THE COURT: Ms. Grossman?

4 MS. GROSSMAN: Your Honor, we respectfully submit  
5 that electronic monitoring is necessary here to mitigate  
6 against the risk of flight. And we disagree with  
7 Mr. Cohen's characterization that its main purpose is to  
8 mitigate against danger. It does provide a disincentive to  
9 flee, and it is extremely helpful in monitoring a  
10 defendant's whereabouts, especially in a case like this  
11 where the defendant has virtually no stable ties to the  
12 United States. He has been in this country only two years.  
13 He himself acknowledged to Pretrial that all of his  
14 collateral ties are in China. His entire immediate family  
15 is in China, parents, sister, child. He's a lifelong  
16 resident of China.

17 If he were to have an opportunity to return to  
18 China, he would be permanently beyond the reach of the  
19 government and this Court. And importantly here, the  
20 government is alleging that the defendant is a Chinese  
21 government employee. And with the support of the Chinese  
22 government and its virtually unlimited resources, were he  
23 given an opportunity to flee, he could expect assistance in  
24 avoiding prosecution in this case. And, in the  
25 government's view -- you know, unfortunately, defendants

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2 can and do leave the country, even without a passport, all  
3 the time, especially defendants with the kind of  
4 international connections that this defendant has. And so  
5 we submit that electronic monitoring is a reasonably  
6 tailored condition to mitigate against the risk of flight  
7 in this case.

8 THE COURT: Okay, anything else, Mr. Cohen?

9 MR. COHEN: No, your Honor.

10 THE COURT: Now, what's the burden when it comes  
11 to risk of flight?

12 MR. COHEN: It's the government's burden to show  
13 by a preponderance of the evidence that a person both is a  
14 risk of flight and that these are the least restrictive  
15 conditions to address that risk of flight. So we already  
16 have the massive personal recognizance bond and cosigner  
17 conditions already that the Court has already agreed to.

18 THE COURT: All right, but, I mean, a personal  
19 recognizance bond where Mr. Liu's assets would be  
20 insufficient to satisfy that --

21 MR. COHEN: Yes.

22 THE COURT: -- that bond; and if he were to  
23 flee, there is -- I mean, I'm just wondering how that  
24 operates as a burden, particularly in the time period  
25 before the two cosigners are onboard.

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2 MR. COHEN: There are -- there are lots of things  
3 that Pretrial can do to keep tabs on someone. The  
4 electronic monitoring is meant to make sure that someone  
5 is home and not out getting into trouble. It's not meant  
6 to, in our view at least, doesn't do much in terms of  
7 countering a risk of flight. I think the government's  
8 arguments about what the Chinese government might do in  
9 the circumstances are fanciful. You have an individual  
10 who's never been arrested who's 57 years old. It seems  
11 that it's not, you know, there's -- I guess you can always  
12 conjure up some concern about flight risk, but I don't  
13 think it's present here. But to answer the Court's  
14 question, it's the government's burden. Thank you.

15 MS. GROSSMAN: Your Honor, unless the Court has  
16 questions, I'll rest on my earlier proffer.

17 THE COURT: Okay, well, I guess maybe I'd like  
18 to hear more about the electronic monitoring that the  
19 government seeks and how that would mitigate against risk  
20 of flight.

21 MS. GROSSMAN: Well, the electronic monitoring I  
22 was envisioning, your Honor, is essentially an ankle  
23 bracelet that provides location information about where  
24 the defendant is. And although the defendant --

25 THE COURT: Wait, but do you mean by GPS

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2 monitoring or --

3 MS. GROSSMAN: GPS monitoring.

4 THE COURT: -- or are you talking about a  
5 bracelet that signals when it's out of range of the home  
6 base?7 MS. GROSSMAN: I was thinking of GPS monitoring,  
8 because we're not asking for home detention here, I think  
9 which is one of the reasons it is reasonably tailored.  
10 We're not seeking to restrict the defendant's movements  
11 more than necessary. But GPS monitoring, frankly, there  
12 aren't other strategies that Pretrial has to keep tabs on  
13 someone's whereabouts as effectively. I mean, that is --  
14 it is just an accurate feed of someone's whereabouts. And  
15 no amount of phone calls or communication could possibly  
16 approximate that type of knowledge.17 And respectively [sic] we do disagree with defense  
18 counsel about the role or sort of the shadow cast by the  
19 Chinese government in this case. The defendant's very  
20 first call today was to a member of the Chinese consulate,  
21 who he was on a first-name basis with. And, you know, a  
22 consulate is, of course, charged with providing passports  
23 and travel documents to its nationals. And we don't  
24 suggest that the defendant will violate the ban on travel  
25 applications, but we do point this out to show that he does

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2 have a close relationship with the Chinese government, with  
3 its officials in this country. And there is -- you know,  
4 that comes with access to a lot of support and resources.  
5 And I think it would certainly mitigate against the risk of  
6 flight for Pretrial to have an accurate feed on his  
7 location.

8                   THE COURT: But I guess is there a time delay or  
9 does somebody need -- doesn't somebody need to be  
10 monitoring the GPS at all times, for example, to ensure  
11 that Mr. Liu isn't going to the airport at any particular  
12 time? I mean, isn't that a problem?

13                   MS. GROSSMAN: Is it a problem as to the resources  
14 that are required to monitor?

15                   THE COURT: No, it's even -- I mean, how does  
16 that mitigate against risk of flight unless you're saying  
17 that there's going to be somebody watching the GPS location  
18 monitoring 24/7?

19                   MS. GROSSMAN: I don't know that it's 24/7, but my  
20 understanding is somebody does monitor it. It may not be  
21 continuous. But I think just knowing that something is  
22 tracking your location and someone may be monitoring it at  
23 any moment certainly provides a disincentive.

24                   THE COURT: Okay. Anything else to add,  
25 Mr. Cohen?

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MR. COHEN: No, your Honor.

3

THE COURT: All right, I'm going to take a brief  
4 recess on this.

5

(Brief recess taken.)

6

THE COURT: All right, we are here in an unusual  
7 circumstance where the government has consented to most but  
8 not all of the terms of release, and the only one being  
9 whether GPS monitoring is appropriate here. The government  
10 asserts that GPS monitoring is the least-restrictive  
11 condition necessary to mitigate the risk of Mr. Liu's  
12 nonappearance at future court proceedings. Mr. Cohen,  
13 Mr. Liu's counsel, asserts the government has not carried  
14 its burden of establishing by a preponderance of the  
15 evidence that Mr. Liu is a flight risk without the  
16 additional condition of GPS monitoring.

17

I find here that the government has satisfied its  
18 burden for the following reasons. All of Mr. Liu's ties  
19 are to China, including several close family members who  
20 reside there. And if he went to China, he would  
21 permanently be out of reach of the U.S. authorities. He  
22 has no ties, whether familial, community, property based or  
23 financial, to the United States or the Southern District of  
24 New York. His visa expires at the end of October. The  
25 nature of the charged offense, visa fraud, indicates, and

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2 as was proffered on the record today, ties to the Chinese  
3 consulate and Chinese government officials.

4 Accordingly, I am satisfied that electronic  
5 monitoring in the form of GPS monitoring is the least-  
6 restrictive additional condition that will reasonably  
7 assure Mr. Liu's appearance at future court proceedings.

8 This finding is without prejudice to a future modification  
9 application after the cosigners have been secured on the  
10 bond.

11 Accordingly, based on my review of the complaint,  
12 the Pretrial Services Report, the agreement of counsel  
13 where there was agreement and the arguments on the GPS  
14 monitoring piece, Mr. Liu may be released on the following  
15 conditions. He may be released on his own signature, but  
16 this would require also the GPS monitoring to be in place  
17 before securing the two financially responsible cosigners  
18 for the \$500,000 personal recognizance bond; travel is  
19 restricted to the Southern and Eastern Districts of New  
20 York and the District of New Jersey; he is to surrender any  
21 travel documents and make no new applications, to the  
22 extent that has not been completed; pretrial supervision as  
23 directed, with electronic monitoring in the form of GPS  
24 monitoring. Is there anything else that I missed on that  
25 list?

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MS. GROSSMAN: No, your Honor.

3

MR. COHEN: Your Honor, just I -- I'm not sure the Court mentioned it, that Mr. Liu would have a week to secure the second cosigners?

6

THE COURT: Yes. I'm sorry, yes. And so the two financially responsible persons, the cosigners, may be secured by Monday, September 23. Okay. Thank you.

9

MR. COHEN: Thank you very much, your Honor.

10

THE COURT: Mr. Liu, if you fail to appear in court as required or if you violate any of the conditions of your release, one, a warrant will be issued for your arrest; two, you and anyone who signed the bond will each be responsible for paying its full amount, that is, \$500,000; and, three, you may be charged with the separate crime of bail jumping, which can mean additional jail time and/or a fine.

18

In addition, if you commit a new offense while you are released, in addition to the sentence prescribed for that offense, you will be sentenced to an additional term of imprisonment of not more than ten years if the offense is a felony or not more than one year if the offense is a misdemeanor. This term of imprisonment would be executed after any other sentence of imprisonment is completed.

25

While you are awaiting trial I also must warn you

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2 not to have any contact with or engage in any intimidation

3 of potential or designated witnesses or jurors, not to

4 engage in any intimidation of any court officer, and not to

5 engage in any conduct that would obstruct any investigation

6 by law enforcement.

7                   And, finally, if you don't agree with my decision  
8 on the electronic monitoring, you have a right to appeal  
9 it.

12 MR. COHEN: We'd waive to the 30th day, your  
13 Honor.

16 MS. GROSSMAN: No, your Honor. Thank you.

17 MR. COHEN: No. Thank you very much, your Honor.

18 THE COURT: Okay. Thank you very much.

19 PRETRIAL SERVICES: Your Honor, if I may, from  
20 Pretrial Services? Just so that we're on the same page,  
21 it's my understanding that stand-alone GPS (indiscernible  
22 at 20:10).

23 MS. GROSSMAN: Yes, that is my understanding, as  
24 well.

25 THE COURT: Okay, I think that's agreed that's

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2 the understanding of everybody here.

3 PRETRIAL SERVICES: Exactly, your Honor. The  
4 location monitoring ankle bracelet (indiscernible at 22:21)  
5 Pretrial Services. Therefore, Pretrial (indiscernible at  
6 20:30).

7 THE COURT: Okay. All right. So ordered.

8 MR. COHEN: Thank you, your Honor.

9 THE COURT: All right. Thank you.

10 MS. GROSSMAN: Thank you, your Honor.

11 THE COURT: Any medical-needs orders that need to  
12 be signed?

13 MR. COHEN: No. He's going to be released on his  
14 own signature now.

15 THE COURT: No, because the bracelet can't be  
16 fitted until tomorrow morning.

17 MR. COHEN: Oh, sorry, your Honor. No, the Court  
18 need not -- Mr. Liu does not need to be incarcerated  
19 tonight in order to assure his appearance tomorrow. He is  
20 going to be -- he'll cosign his bond; the government has  
21 his passport. He'll be back tomorrow morning. He can  
22 report at 10:00 AM to have the ankle bracelet put on at  
23 that time. It's not necessary that he be detained.

24 It's --

25 THE COURT: Why don't I take a brief, five-

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2 minute adjournment to see if you can work something out  
3 and see what can be worked out, okay?  
4 (Brief recess taken.)  
5 THE COURT: All right, please be seated.  
6 Okay, do we have a report?  
7 MS. GROSSMAN: Yes, your Honor. The parties have  
8 agreed that the defendant may be released on his own  
9 signature tonight but must report tomorrow morning to  
10 Pretrial in order to have the GPS monitoring implemented.  
11 THE COURT: Okay. All right, I accept the  
12 agreement.  
13 Is there anything else we do need to do today?  
14 MS. GROSSMAN: No, your Honor. Thank you.  
15 MR. COHEN: No. Thank you very much, your Honor.  
16 THE COURT: Okay, should I put 10:00 AM or  
17 another time for appearing tomorrow?  
18 MR. COHEN: No, 10:00 AM is fine. Thank you.  
19 THE COURT: Okay. All right. Thank you. We're  
20 adjourned.  
21 (Whereupon, the matter is recessed.)  
22  
23  
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3 C E R T I F I C A T E

4

5 I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the case of United States of  
7 America v. Liu, Zhongsan, Docket #19-mj-08641-UA All  
8 Defendants, was prepared using digital transcription  
9 software and is a true and accurate record of the  
10 proceedings.

11

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14 *Carole Ludwig*

15

Signature

16 Carole Ludwig

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Date: September 30, 2019

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